

IC 6-8.1-15

Chapter 15. Taxing Situs of Mobile Telecommunications Service

IC 6-8.1-15-1

"Charges for mobile telecommunications service" defined

Sec. 1. As used in this chapter, "charges for mobile telecommunications service" means any charge for or associated with the provision of commercial mobile radio service, as defined in Section 20.3 of Title 47 of the Code of Federal Regulations as in effect on June 1, 1999, or any charge for or associated with a service provided as an adjunct to a commercial mobile radio service, that is billed to the customer by or for the customer's home service provider regardless of whether individual transmissions originate or terminate within the licensed service area of the home service provider.

As added by P.L.104-2002, SEC.2.

IC 6-8.1-15-2

"Customer" defined

Sec. 2. (a) As used in this chapter, except as provided in subsection (b), "customer" means:

- (1) the person or entity that contracts with the home service provider for mobile telecommunications service; or
- (2) if the end user of mobile telecommunications service is not the contracting party, the end user of the mobile telecommunications service, but this subdivision applies only for the purpose of determining the place of primary use.

(b) The term "customer" does not include:

- (1) a reseller of mobile telecommunications service; or
- (2) a serving carrier under an arrangement to serve the customer outside the home service provider's licensed service area.

As added by P.L.104-2002, SEC.2.

IC 6-8.1-15-3

"Designated data base provider" defined

Sec. 3. As used in this chapter, "designated data base provider" means a corporation, an association, or other entity representing the state and political subdivisions of the state that is responsible for providing an electronic data base under section 15 of this chapter and approved by the department.

As added by P.L.104-2002, SEC.2.

IC 6-8.1-15-4

"Enhanced ZIP code" defined

Sec. 4. As used in this chapter, "enhanced ZIP code" means a United States postal ZIP code of nine (9) or more digits.

As added by P.L.104-2002, SEC.2.

IC 6-8.1-15-5

"Home service provider" defined

Sec. 5. As used in this chapter, "home service provider" means the

facilities based carrier or reseller with which the customer contracts for the provision of mobile telecommunications service.

As added by P.L.104-2002, SEC.2.

IC 6-8.1-15-6

"Licensed service area" defined

Sec. 6. As used in this chapter, "licensed service area" means the geographic area in which the home service provider is authorized by law or contract to provide commercial mobile radio service to the customer.

As added by P.L.104-2002, SEC.2.

IC 6-8.1-15-7

"Mobile telecommunications service" defined

Sec. 7. As used in this chapter, "mobile telecommunications service" means commercial mobile radio service, as defined in Section 20.3 of Title 47 of the Code of Federal Regulations as in effect on June 1, 1999.

As added by P.L.104-2002, SEC.2.

IC 6-8.1-15-8

"Place of primary use" defined

Sec. 8. As used in this chapter, "place of primary use" means the street address representative of where the customer's use of the mobile telecommunications service primarily occurs, which must be:

- (1) the residential street address or the primary business street address of the customer; and
- (2) within the licensed service area of the home service provider.

As added by P.L.104-2002, SEC.2.

IC 6-8.1-15-9

"Prepaid telephone calling service" defined

Sec. 9. As used in this chapter, "prepaid telephone calling service" means the right to purchase exclusively telecommunications service that must be paid for in advance that enables the origination of calls using an access number or authorization code, or both, whether manually or electronically dialed, if the remaining amount of units of service that has been prepaid is known by the provider of the prepaid service on a continuous basis.

As added by P.L.104-2002, SEC.2.

IC 6-8.1-15-10

"Reseller" defined

Sec. 10. As used in this chapter, "reseller" means a provider who purchases telecommunications service from another telecommunications service provider and then resells, uses as a component part of, or integrates the purchased service into a mobile telecommunications service. The term does not include a serving carrier with which a home service provider arranges for the service

to its customers outside the home service provider's licensed service area.

As added by P.L.104-2002, SEC.2.

IC 6-8.1-15-11

"Serving carrier" defined

Sec. 11. As used in this chapter, "serving carrier" means a facilities based carrier providing mobile telecommunications service to a customer outside a home service provider's or reseller's licensed service area.

As added by P.L.104-2002, SEC.2.

IC 6-8.1-15-12

Legislative findings of fact

Sec. 12. The general assembly finds that:

- (1) the United States Congress has enacted the Mobile Telecommunications Sourcing Act (4 U.S.C. 116 et seq.) for the purpose of establishing uniform nationwide sourcing rules for state and local taxation of mobile telecommunications service;
- (2) the federal Mobile Telecommunications Sourcing Act provides that taxes on mobile telecommunications service shall be paid to the jurisdiction where the customer's primary use of the service occurs, irrespective of where the mobile telecommunications service originates, terminates, or passes through; and
- (3) it is desirable to implement the federal Mobile Telecommunications Sourcing Act in Indiana.

As added by P.L.104-2002, SEC.2.

IC 6-8.1-15-13

Application of chapter

Sec. 13. (a) Except as provided by section 20 of this chapter, this chapter applies to:

- (1) the gross retail tax imposed on mobile telecommunications service under IC 6-2.5-4-6;
- (2) the monthly emergency wireless enhanced 911 fee imposed on mobile telecommunications service under IC 36-8-16.5; and
- (3) any other tax, charge, or fee levied by the state or a taxing jurisdiction within Indiana as a fixed charge for each customer or measured by gross amounts charged to customers for mobile telecommunications service, regardless of whether the tax, charge, or fee is imposed on the vendor or customer of the service and regardless of the terminology used to describe the tax, charge, or fee;

on bills for mobile telecommunications service issued to customers after July 31, 2002.

(b) This chapter does not apply to:

- (1) any tax, charge, or fee levied upon or measured by the net income, capital stock, net worth, or property value of the provider of mobile telecommunications service;

- (2) any tax, charge, or fee that is applied to an equitably apportioned amount that is not determined on a transactional basis;
- (3) any tax, charge, or fee that:
 - (A) represents compensation for a mobile telecommunications service provider's use of public rights-of-way or other public property; and
 - (B) is not levied by the taxing jurisdiction as a fixed charge for each customer or measured by gross amounts charged to customers for mobile telecommunication service;
- (4) any generally applicable business and occupation tax that is imposed by the state, is applied to gross receipts or gross proceeds, is the legal liability of the home service provider, and that statutorily allows the home service provider to elect to use the sourcing method required in this section; or
- (5) the determination of the taxing situs of:
 - (A) prepaid telephone calling service; or
 - (B) air-ground radiotelephone service as defined in Section 22.99 of Title 47 of the Code of Federal Regulations as in effect June 1, 1999.

As added by P.L.104-2002, SEC.2.

IC 6-8.1-15-14

Sourcing of telecommunications service

Sec. 14. (a) Notwithstanding any other law, mobile telecommunications service provided in a taxing jurisdiction to a customer, the charges for which are billed by or for the customer's home service provider, are considered to be provided by the customer's home service provider.

(b) All charges for mobile telecommunications service that are considered to be provided by the customer's home service provider under this chapter are authorized to be subjected to tax, charge, or fee by the taxing jurisdictions whose territorial limits encompass the customer's place of primary use, regardless of where the mobile telecommunication service originates, terminates, or passes through.

(c) This chapter does not:

- (1) authorize a taxing jurisdiction to impose a tax, charge, or fee that the jurisdiction is not otherwise authorized to impose; or
- (2) modify, impair, supersede, or authorize the modification, impairment, or supersession of the law of any taxing jurisdiction pertaining to taxation except as expressly provided by this chapter.

As added by P.L.104-2002, SEC.2.

IC 6-8.1-15-15

Electronic data base

Sec. 15. (a) The department may provide an electronic data base to a home service provider or, if the department does not provide an electronic data base to home service providers, the designated data base provider may provide an electronic data base to a home service

provider. The department or the designated data base provider shall provide the data base in a format that complies with the requirements of the federal Mobile Telecommunications Sourcing Act (4 U.S.C. 116 et seq.).

(b) The department or designated data base provider shall provide notice of the availability of the then current electronic data base and any subsequent revisions of the data base by publication in the manner normally employed for the publication of informational tax, charge, or fee notices to taxpayers in Indiana.

(c) A home service provider using the data contained in an electronic data base described in this section shall be held harmless from any tax, charge, or fee liability that otherwise would be due solely as a result of any error or omission in the data base. The home service provider shall reflect changes made to the data base during a calendar quarter not later than thirty (30) days after the end of the calendar quarter.

As added by P.L.104-2002, SEC.2.

IC 6-8.1-15-16

Use of enhanced ZIP codes

Sec. 16. (a) If an electronic data base is not provided under section 15 of this chapter, a home service provider shall be held harmless from any tax, charge, or fee liability in Indiana that otherwise would be due solely as a result of an assignment of a street address to an incorrect taxing jurisdiction if, subject to section 18 of this chapter, the home service provider employs an enhanced ZIP code to assign each street address to a specific taxing jurisdiction for each level of taxing jurisdiction and exercises due diligence at each level of taxing jurisdiction to ensure that each street address is assigned to the correct taxing jurisdiction. If an enhanced ZIP code overlaps boundaries of taxing jurisdictions of the same level, the home service provider must designate one (1) specific jurisdiction within the enhanced ZIP code for use in taxing the activity for that enhanced ZIP code for each level of taxing jurisdiction. Any enhanced ZIP code assignment changed in accordance with section 18 of this chapter is considered to be in compliance with this section.

(b) For purposes of this section, there is a rebuttable presumption that a home service provider has exercised due diligence if the home service provider demonstrates that it has:

- (1) expended reasonable resources to implement and maintain an appropriately detailed electronic data base of street address assignments to taxing jurisdictions;
- (2) implemented and maintained reasonable internal controls to promptly correct misassignments of street addresses to taxing jurisdictions; and
- (3) used all reasonably obtainable and usable data pertaining to municipal annexation, incorporations, reorganizations, and any other changes in jurisdictional boundaries that materially affect the accuracy of the data base.

(c) This section applies to a home service provider that is in

compliance with the requirements of this section until the later of:

- (1) eighteen (18) months after the nationwide standard numeric code described in the federal Mobile Telecommunications Sourcing Act (4 U.S.C. 116 et seq.) has been approved by the Federation of Tax Administrators and the Multistate Tax Commission; or
- (2) six (6) months after the department or a designated data base provider provides a data base as described in section 15 of this chapter.

As added by P.L.104-2002, SEC.2.

IC 6-8.1-15-17

Reliance on address supplied by customer

Sec. 17. (a) A home service provider is responsible for obtaining and maintaining the customer's place of primary use. Subject to section 18 of this chapter, a home service provider may rely on the applicable residential or business street address supplied by the home service provider's customer and is not liable for any additional taxes, charges, or fees based on a different determination of the place of primary use for taxes, charges, or fees that are customarily passed on to the customer as a separate itemized charge if the reliance on information provided by its customer is in good faith.

(b) Except as provided in section 18 of this chapter, a home service provider may treat the address used by the home service provider for tax purposes for any customer under a service contract or agreement in effect on or before July 28, 2002, as that customer's place of primary use for the remaining term of the service contract or agreement, excluding any extension or renewal of the service contract or agreement, for purposes of determining the taxing jurisdictions to which taxes, charges, or fees on charges for mobile telecommunications service are remitted.

As added by P.L.104-2002, SEC.2.

IC 6-8.1-15-18

Correction of erroneous data by department

Sec. 18. (a) The department may determine that the address used for purposes of determining the taxing jurisdictions to which taxes, charges, or fees for mobile telecommunications service are remitted does not meet the definition of "place of primary use" in this chapter and give binding notice to the home service provider to change the place of primary use on a prospective basis from the date of notice of determination. Before the department gives a notice of determination, the customer must be given an opportunity to demonstrate in accordance with department rules and administrative procedures that the address is the customer's place of primary use.

(b) The department may determine that the assignment of a taxing jurisdiction by a home service provider under section 16 of this chapter does not reflect the correct taxing jurisdiction and give binding notice to the home service provider to change the assignment on a prospective basis from the date of notice of determination. The

home service provider must be given an opportunity to demonstrate in accordance with department rules and administrative procedures that the assignment reflects the correct taxing jurisdiction.

As added by P.L.104-2002, SEC.2.

IC 6-8.1-15-19

Identification of nontaxable services

Sec. 19. If charges for nontaxable mobile telecommunications service are aggregated with and not separately stated from charges that are subject to taxation, the charges for nontaxable mobile telecommunications service are subject to taxation unless the home service provider can reasonably identify charges not subject to the tax, charge, or fee from its books and records that are kept in the regular course of business.

As added by P.L.104-2002, SEC.2.

IC 6-8.1-15-20

Application of chapter if federal law invalidated

Sec. 20. Notwithstanding any other provision of this chapter, this chapter does not apply to any tax, charge, or fee levied by the state or a taxing jurisdiction within Indiana beginning on the date of entry of a final judgment on the merits by a court that:

- (1) is based on federal law;
- (2) is no longer subject to appeal; and
- (3) substantially limits or impairs the essential elements of the federal Mobile Telecommunications Sourcing Act (4 U.S.C. 116 et seq.).

As added by P.L.104-2002, SEC.2.

IC 6-8.1-15-21

Customer remedies

Sec. 21. (a) If a customer believes that an amount of tax, charge, or fee or an assignment of place of primary use or taxing jurisdiction included on a bill under this chapter is erroneous, the customer shall notify the home service provider in writing. The customer shall include in the written notification the street address for the customer's place of primary use, the account name and number for which the customer seeks a correction, a description of the error asserted by the customer, and any other information that the home service provider reasonably requires to process the request.

(b) Within sixty (60) days after receiving a notice under this section, the home service provider shall review its records to determine the customer's taxing jurisdiction. If the review shows that the amount of tax, charge, or fee or assignment of place of primary use or taxing jurisdiction is in error, the home service provider shall correct the error and refund or credit the amount of tax, charge, or fee erroneously collected from the customer for a period of up to two (2) years. If the review shows that the amount of tax, charge, or fee or assignment of place of primary use or taxing jurisdiction is correct, the home service provider shall provide a written explanation

to the customer.

(c) The procedures set forth in this section are the first course of remedy available to a customer seeking correction of assignment of place of primary use or taxing jurisdiction, or a refund of or other compensation for taxes, charges, or fees erroneously collected by the home service provider. No cause of action based upon a dispute arising from the collection of any such taxes, charges, or fees shall accrue until a customer has exhausted the remedies set forth in this section.

As added by P.L.104-2002, SEC.2.